IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1637 of 2003
To
FIRST APPEAL No. 1646 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABDULRAHIM ISMAIL BAGWALA - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Defendant(s)

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Appearance :
MR KM SHETH for Appellant(s) : 1,
Mr.S.S.Patel,learned AGP for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 12/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. These appeals filed under Section 54 of the Land Acquisition Act, 1984 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908 are directed against common judgment and award dated March 31, 2001 rendered by learned Extra Assistant Judge, Godhra, Panchmahals in Land Acquisition Reference No.22 of 1997 to Land Acquisition Reference No.28 of 1997 and Land Acquisition Reference No.31 of 1997 to Land Acquisition Reference No.34 of 1997, by which the claimants are awarded additional amount of compensation at the rate of Rs.67.30 Ps. per Sq.Mt. of their acquired lands, over and above the compensation awarded to them at the rate of Rs.5/- per Sq.mt. by the Special Land Acquisition Officer, Godhra.

2. A proposal was received by the State Government to acquire lands of village Halol, Taluka Halol, District Panchmahals for the purpose of construction

of diversion road. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Halol were likely to be needed for the said public purpose. Therefore, Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on November 28,1994. The land owners, whose lands were sought to be acquired,were served with notices. They had filed objections against the proposed acquisition. After considering their objections, a report was submitted by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Halol, mentioned in the Notification published under Section 4(1) of the Act, were needed for the public purpose of construction of diversion road. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on October 26, 1995. The interested persons were, thereafter, served with notices under Section 9 of the Act for determination of the compensation. Having regard to the materials placed before him, the

Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.5/- per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted written applications to the Special Land Acquisition Officer requiring him to refer the matter to the Court for the purpose of determination of compensation payable to them. Accordingly,references were made to the District Court, Panchmahals, Godhra, which were numbered as noticed earlier. The claimants appeared before the Reference Court and they claimed compensation at the rate of Rs.100/- per Sq.Mt. for their acquired lands.

3. On behalf of the claimants witness Dashratbhai Mangalbhai Patel was examined at Exh.23. Apart from stating that all the acquired lands were highly fertile and that each claimant was earning Rs.10,000/- to Rs.15,000/- as net profit from the sale of agricultural produces per Vigha, the witness produced judgment and award of Reference Court rendered earlier in respect of lands of Dev Colony

situated in Village Halol, for the public purpose of construction of Halol diversion road.. The cross-examination of the witness indicated that the lands acquired were at a distance of 1.5 Kms. away from Halol bus stand. On appreciation of evidence adduced by the parties, the learned Judge of the Reference Court was of the opinion that Exh.22 was a relevant piece of evidence for the purpose of determining market value of the lands acquired in the instant case. The learned Judge noticed that lands of Dev Colony were acquired pursuant to publication of Notification issued under Section 4(1) of the Act on December 1,1989. It was also noticed by the Reference Court that market value of the lands of Dev Colony was determined at Rs.48.20 Ps. per Sq.Mt. vide judgment dated October 30, 1999. The Reference Court was of the opinion that in view of time gap between the Notifications issued and published under Section 4(1) of the Act, the claimants in the instant case were entitled to rise in price of land at the rate of 10% per annum. Thus, in ultimate analysis Reference Court held by judgment and award dated March 31, 2001 that the claimants are entitled to additional

compensation at the rate of Rs.67.30 Ps. per Sq.Mt., over and above the compensation awarded by the Special Land Acquisition Officer at the rate of Rs.5/- per Sq.Mt., giving rise to above numbered appeals.

4. This Court has heard Mr.K.M.Sheth, learned counsel for the appellants and Mr.Sudhanshu S.Patel, learned AGP appearing for the respondents at length and in great detail. This Court has also considered the evidence adduced by the parties before the Reference Court. From the record of the case it is evident that award, which is subject matter of challenge in the instant appeals at the instance of the claimants, was challenged by the Special Land Acquisition Officer in First Appeal No.589 of 2002 to First Appeal No. 599 of 2002. Those appeals were rejected by a Division Bench comprising N.G.Nandi and D.A.Mehta,JJ vide judgment dated January 27, 2003. The record does not indicate that the judgment delivered by Division Bench of this Court in First Appeal No.589 of 2002 to First Appeal No.599 of 2002 was challenged by the State Government or the

acquiring body before the higher forum. A perusal of the judgment delivered on January 27, 2003 makes it very clear that the Division Bench was satisfied that Exh.22 was rightly relied upon by the Reference Court for the purpose of determining market value of the lands acquired in the instant case. As noticed earlier, by Exh.22 it was determined by the Reference Court that the claimants were entitled to compensation at the rate of Rs.48.20 Ps. per Sq.Mt. for the lands of Dev Colony of Village Halol, which were acquired earlier. The record shows that earlier judgment of the Reference Court produced at Exh.22 was challenged by the Special Land Acquisition Officer in First Appeal No.2414 of 2000 to First Appeal No.2426 of 2000, whereas the claimants had filed cross objections No.8 of 2001 to No.20 of 2001. A Division Bench of this Court dismissed First Appeal No.2414 of 2000 to First Appeal No.2426 of 2000 and partly allowed Cross Objections No.8 of 2001 to No.20 of 2001 vide judgment dated March 29,2001, holding that the claimants were entitled to compensation at the rate of Rs.76/- per Sq.Mt., instead of Rs.40/- per Sq.Mt., which was found

payable to the claimants pursuant to another award of the Reference Court, which was produced in those cases at Exh.21. Thus, there is no manner of doubt that earlier, the claimants, whose lands were acquired for Halol diversion road, were awarded compensation at the rate of Rs.76/- per Sq.Mt. It may be mentioned that Notification' under Section 4(1) of the Act was published with reference to the lands which were subject matter of Exh.22 on December 1,1989 whereas in the instant case Notification under Section 4(1) of the Act was published on November 28, 1994. Thus, there was time gap of about five years between issuance of the two Notifications under Section 4 of the Act. The Supreme Court has held in catena of decisions that if there is time gap between the two Notifications issued under Section 4(1) of the Act, then claimants should be awarded rise in price of land at the rate of 10% per annum. If amount of compensation payable to the claimants is calculated after giving price rise at the rate of 10% per annum, the amount payable to the claimants as compensation would exceed Rs.100/- per Sq.Mt. As observed earlier, the claimants have claimed

compensation at the rate of Rs.100/- per Sq.Mt. before the Reference Court and, therefore, they can not be awarded more than what was claimed by them before the Reference Court. However, there is no manner of doubt that the claimants would be entitled to the compensation at the rate of Rs.100/- per Sq.Mt.

5. For the forgoing reasons, the appeals are allowed. It is held that in all, the claimants would be entitled to compensation at the rate of Rs.100/- per Sq.Mt. for their acquired lands. There shall be no order as to costs.

The office is directed to draw decree in terms of this judgment.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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